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NRA GROUP, LLC d/b/a NATIONAL RECOVERY AGENCY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD CARUSO,
Plaintiff,

vs.

NATIONAL RECOVERY AGENCY,
A professional consumer debt
collection agency, doing business in
California, DOES 1 through 10
inclusively,
Defendants.

Case No.: 16-CV-1679-BAS-WVG

**NOTICE OF MOTION AND
MOTION FOR JUDGMENT ON
THE PLEADINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

[Filed Concurrently with Request
For Judicial Notice]

Date: November 28, 2016

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

Hon. Cynthia Bashant
United States District Court Judge

TO PLAINTIFF RICHARD CARUSO, IN *PRO SE*:

PLEASE TAKE NOTICE that on November 28, 2016, or as soon thereafter
as this matter may be heard, in Courtroom 4B of the above-entitled Court, located at
221 West Broadway, Suite 4145, San Diego, California 92101, Defendant NRA
GROUP, LLC d/b/a NATIONAL RECOVERY AGENCY (“NRA”) will, and hereby
does, move for judgment on the pleadings pursuant to *Federal Rule of Civil
Procedure* 12(c). This Motion is made on the grounds that Plaintiff filed and
dismissed an earlier Complaint against NRA for the same claims in the same court,
with prejudice. The doctrine of *res judicata* prohibits a second suit between the same

1 parties on the same claims. Therefore, Plaintiff's subsequent lawsuit is barred and
2 his claims against NRA are precluded as a matter of law.

3 This Motion will be based on this Notice of Motion and Motion, The
4 Memorandum of Points and Authorities filed herewith, the Request for Judicial
5 Notice, and the pleadings and papers filed herein. NRA is in compliance with No.
6 4A in the Standing Order for Civil Cases for the Hon. Cynthia Bashant. This motion
7 is exempt from the meet-and-confer requirement prior to filing this noticed Motion
8 because Plaintiff is appearing *pro se* and is not an attorney. Nonetheless, prior to
9 filing, defense counsel contacted Plaintiff *pro se* and discussed the substance of this
10 motion verbally and in writing, on October 18, 2016.

11
12 DATED: October 20, 2016

CARLSON & MESSER LLP

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14 By: /s/ J. Grace Felipe
15 Jeanne L. Zimmer
16 J. Grace Felipe
17 Attorneys for Defendant,
18 NRA GROUP, LLC d/b/a
19 NATIONAL RECOVERY
20 AGENCY
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Plaintiff in *pro se*, RICHARD CARUSO (“Plaintiff”) filed two identical lawsuits against Defendant NRA GROUP, LLC d/b/a NATIONAL RECOVERY AGENCY (hereinafter “NRA”) in the United States District Court – Southern District of California, within the span of four months. Both lawsuits allege violations of the Telephone Consumer Protection Act, 47, U.S.C. §§ 227 *et seq.* (“TCPA”), Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* (“FDCPA”), Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* (“FCRA”), California Consumer Credit Reporting Agencies Act, *Civil Code* §§ 1785 *et seq.* (“CCRAA”) and California Rosenthal Fair Debt Collection Practices Act, *Civil Code* §§ 1788 *et seq.* (the “Rosenthal Act”). Plaintiff dismissed his initial lawsuit against NRA with prejudice. NRA now seeks judgment on the pleadings on Plaintiff’s subsequent Complaint on the grounds that he is precluded from bringing the same claims against NRA in this court.

In the past seven months, Plaintiff filed various complaints in the United States District Court – Southern District of California asserting claims under the TCPA, FDCPA and other consumer statutes (*Richard Caruso v. Encore Capital Group, et al.*, Case No. 3:16-cv-00586-BAS-BGS; *Richard Caruso v. California Business Bureau, et al.*, Case No. 3:16-cv-00587-WQH-JMA; *Richard Caruso v. Merchants Credit Association, et al.*, Case No. 3:16-cv-00895-BAS-ABS; *Richard Caruso v. California Recovery Bureau*, Case No. 3:16-cv-00902-BTM-DHB). In particular, Plaintiff filed two against NRA.

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1 **A. The Initial Complaint**

2 On March 2, 2016, Plaintiff filed a Complaint for Damages and Injunctive
3 Relief under the TCPA, FDCPA, FCRA, CCRAA and Rosenthal Act against NRA,
4 TransUnion, LLC (“TransUnion”) and Experian Information Solutions, Inc.
5 (“Experian”), styled *Richard Caruso v. National Recovery Agency, et al.*, Case No.
6 3:16-cv-00534-WQH-JMA (hereinafter referred to as “1st Lawsuit”). [See Request
7 for Judicial Notice (hereinafter “RJN”), No. 1.] Plaintiff served NRA with the
8 Summons and Complaint in the 1st Lawsuit. [See Civil Docket, No. 6, attached as
9 Exhibit 3 to RJN No. 3.] On August 22, 2016, Plaintiff filed a Voluntary Dismissal
10 of the 1st Lawsuit with Prejudice. [See RJN No. 2.] In Plaintiff’s Voluntary
11 Dismissal with Prejudice, he states:

12 Comes now, RICHARD CARUSO, Plaintiff in the above-
13 entitled case appearing before the honorable court In Pro
14 Se, freely and voluntarily DISMISSES the above-entitled
15 action against ALL named defendants with prejudice. I
16 hereby request that this case as it appliance to all named
17 defendant should be closed forthwith, and dismissed
18 immediately with prejudice.

19 [Exhibit 2 attached to RJN. (Emphasis in original.)]

20 **B. The Subsequent Complaint**

21 On June 29, 2016, Plaintiff filed another Complaint for Damages and
22 Injunctive Relief under the TCPA, FDCPA, FCRA, CCRAA and Rosenthal Act, but
23 only named NRA as a defendant. Neither Transunion nor Experian are parties. These
24 claims are the same as those asserted in the 1st Lawsuit although Plaintiff apparently
25 never informed the Court at any time that both actions are related.

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1 **III. ARGUMENT**

2 **A. Legal Standard**

3 *Federal Rule of Civil Procedure* 12(c) provides that a party may move for
4 judgment on the pleadings “[a]fter pleadings are closed— but early enough not to
5 delay trial.” A Rule 12(c) motion challenges the legal sufficiency of the opposing
6 party’s pleadings. It provides a vehicle for summary adjudication on the merits which
7 “may save the parties needless and often considerable time and expense that would
8 otherwise be incurred during discovery and trial.” *Perez v. Wells Fargo & Co.*, 75
9 F.Supp.3d 1184, 1187 (N.D. Cal. 2014) (quoting text).

10 A motion for judgment on the pleadings under Rule 12(c) is “functionally
11 identical” as a motion to dismiss under Rule 12(b)(6), except a Rule 12(c) motion is
12 made after the answer is filed. In deciding a Rule 12(c) motion, courts apply the
13 same standards of a Rule 12(b)(6) motion. *Cafasso, U.S. ex rel. v. General Dynamics*
14 *C4 Systems, Inc.*, 637 F.3d. 1047, 1054 (9th Cir. 2011); *Erickson v. Boston Scientific*
15 *Corp.*, 846 F.Supp.2d 1085, 1089 (C.D. Cal. 2011), and *Ross v. U.S. Bank Nat’l*
16 *Ass’n*, 542 F.Supp.2d 1014, 1023 (N.D. Cal. 2008). As with Rule 12(b) motions, the
17 court must assume the truthfulness of the material facts alleged in the pleadings in
18 finding that the moving party is entitled to judgment as a matter of law. *Fleming v.*
19 *Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Thus, to survive a motion for judgment
20 on the pleadings, the complaint must contain sufficient factual allegations, even if
21 accepted as true, to state a claim that is plausible on its face. *Chavez v. United States*,
22 683 F.3d 1102, 1108-09 (9th Cir. 2012).

23 As set forth herein and in the Request for Judicial Notice, NRA is entitled to
24 judgment as a matter of law because Plaintiff is precluded from raising the same
25 claims against NRA in this Court when he completely dismissed the 1st Lawsuit
26 against NRA with prejudice.

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1 **B. Plaintiff's Action Against NRA is Barred Because He Voluntarily**
2 **Dismissed the 1st Lawsuit With Prejudice**

3 The effect of a voluntary dismissal *with prejudice* operates as an adjudication
4 on the merits, barring further action on the same claims in the same court. *Semtek*
5 *International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505, 121 S.Ct. 1021; *see*
6 *also Goddard v. Security Title Ins. & Guarantee Co.*, 14 Cal.2d 47, 51 (1939)(stating
7 that a dismissal “with prejudice” evinces “[t]he intention of the court to make [the
8 dismissal] on the merits.”). In *Semtek*, the Supreme Court interpreted a dismissal
9 prejudice is equivalent to an “adjudication on the merits.”

10 We think the key to a more reasonable interpretation of the
11 meaning of “operates as an adjudication upon the merits” in
12 Rule 41(b) is to be found in Rule 41(a), which in discussing
13 the effect of voluntary dismissal by the plaintiff makes clear
14 that an “adjudication upon the merits” is the opposite of a
15 “dismissal without prejudice.” *Semtek, supra*, 531 U.S. at
16 505.

17 Rule 41(a)(1)(B) states as follows:

18 “Unless the notice of stipulation states otherwise, the
19 dismissal is without prejudice. But if the plaintiff previously
20 dismissed any federal- or state-court action based on or
21 including the same claim, a notice of dismissal operates as
22 an adjudication on the merits.”

23 Thus, the Supreme Court reasoned that “the effect of ‘adjudication upon the
24 merits’ default provision of Rule 41(b) . . . is simply that, unlike a dismissal ‘without
25 prejudice,’ the dismissal in the present case barred refile of the same claim in the
26 United States District Court for the Central District of California.” *Semtek, supra*,
27 531 U.S. at 506.

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1 Here, Plaintiff filed duplicate complaints against NRA asserting claims under
2 the TCPA, FDCPA, FCRA, CCRAA and Rosenthal Act concerning the same time
3 period, facts and Defendant. The 1st lawsuit was filed on March 2, 2016. When
4 Plaintiff voluntarily dismissed the 1st lawsuit, he unequivocally stated in the notice
5 that he “freely and voluntarily DISMISSES the above-entitled action against ALL
6 named defendants with prejudice. I hereby request that this case as it appliance to all
7 named defendant should be closed forthwith, and dismissed immediately with
8 prejudice.” [See Exhibit 2 attached to RJN.] In effect, Plaintiff’s dismissal of the 1st
9 action with prejudice thereby bars Plaintiff from pursuing the instant action for the
10 same claims brought in the same court. As a matter of law, NRA is entitled to
11 judgment on Plaintiff’s Complaint based on the doctrines of *res judicata* and claim
12 preclusion, and his dismissal of NRA with prejudice.

14 IV. CONCLUSION

15 Plaintiff sued NRA once in this court and voluntarily dismissed his claims with
16 prejudice. Plaintiff is thereby precluded from pursuing his action in this Court for
17 the same claims against NRA. In light of the foregoing, NRA respectfully requests
18 that the Court GRANT NRA’s Motion for Judgment on the Pleadings, enter judgment
19 in favor of NRA and dismiss Plaintiff’s entire action, as a matter of law.

21 DATED: October 20, 2016

CARLSON & MESSER LLP

22 By: /s/ J. Grace Felipe
23 Jeanne L. Zimmer
24 J. Grace Felipe
25 Attorneys for Defendant,
26 NRA GROUP, LLC d/b/a
27 NATIONAL RECOVERY
28 AGENCY